

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
NOVEMBER 29, 2004

**D045090        Nicklett T. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner James P. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed. The case is dismissed.

**D043159        People v. Rucker**

The judgment is affirmed. CERTIFIED FOR PARTIAL PUBLICATION. McConnell, P.J.,  
We Concur: Huffman, J., Haller, J.

**D043083        People v. Freeman**

The petition for rehearing is denied.

**D045430        Frazier, III v. Superior Court of San Diego County/Kelso**

The petition is denied.

**D041699        People v. Gomez**

The judgment is affirmed as to the convictions. The judgment is reversed as to the sentence and remanded for resentencing in a manner consistent with this opinion. Haller, J.; We Concur: McConnell, P.J., McIntyre, J.

**D043125        Independent Energy Producers Association, Inc. v. State Board of Equalization**

The judgment is affirmed. Nares, J.; We Concur: Benke, Acting P.J., Haller, J.

**D043854        In re Marriage of Wilcox**

The trial court's ruling is affirmed. Costs are awarded to respondent. CERTIFIED FOR PUBLICATION. Huffman, J.; We Concur: McConnell, P.J., Benke, J.

**D042605        People v. Murillo**

The sentence, insofar as the court imposed the upper terms for the mayhem conviction and the GBI enhancement, is vacated; in all other respects, the judgment is affirmed. The case is remanded to the superior court to conduct a new sentencing hearing consistent with the principles discussed in this opinion. McDonald, J.; We Concur: Huffman, Acting P.J., Haller, J.

**D045442        Mason v. Superior Court of San Diego County/People**

The petition is denied.

**D045433        Gutierrez v. Superior Court of San Diego County/People**

The petition is denied.

**D042327        Valladolid v. County of San Diego Board of Supervisors et al.**

The judgment is affirmed. Respondents are awarded costs on appeal. McConnell, P.J.;  
We Concur: Huffman, J., McDonald, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
NOVEMBER 29, 2004 (Continued)

**D043607            Ellsworth et al. v. Board of Retirement et al.**

The order is affirmed. The defendants are awarded costs on appeal. McIntyre, J.; We Concur: Nares, Acting P.J., Haller, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
NOVEMBER 30, 2004

**D040824        People v. Fuson**

The judgment is modified to strike the victim restitution order of \$1,918.98 to the CVPD. As modified the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment reflecting such modification and the correct oral judgment of sentence and to forward a certified copy of the amended/corrected abstract to the Department of Correction. Huffman, Acting P.J.; I Concur: Irion, J. I dissent: O'Rourke, J.

**D045439        In re Wilkerson on Habeas Corpus**

The petition is denied.

**D042860        Baumer v. McGruer et al.**

The petition for rehearing is denied.

**D044616        Alpha Mechanical, Heating & Air Conditioning, Inc. v. R.A.S. Builders, Inc.**

Appellant R.A.S. Builders, Inc. has failed to file a brief after notice given pursuant to California Rules of Court, rule 17(a). The appeal is dismissed as to R.A.S. Builders, Inc.

**D042645        People v. Calhoun et al.**

The petition for rehearing is denied. Justices McDonald and McIntyre concur in the denial; Presiding Justice McConnell would grant.

**D045048        In re C. L., a Juvenile**

The appeal is dismissed. McIntyre, J.; We Concur: Nares, Acting P.J., Irion, J.

**D043073        People v. Mello**

The judgment is reversed as to the sentence on counts 2, 3, 4, 5, 6, 8 and 9, and the matter is remanded for resentencing in a manner consistent with the views expressed in this opinion. In all other respects, the judgment is affirmed. Huffman, Acting P.J.; We Concur: McDonald, J., McIntyre, J.

**D045446        McKinney v. Superior Court of San Diego County/City of San Diego et al.**

Under Rule 47.1(b)(1)(B), California Rules of Court, the above case is transferred from Division One to Division Three of the Fourth Appellate District.

**D043545        In re Marriage of Hagen**

Upon written request filed by appellant, the appeal is dismissed and the remittitur is ordered to issue immediately.

**D045290        Desiree P. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Desiree P. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues. The case is dismissed.

**D043831        People v. Bushcer**

The judgment is affirmed. Benke, Acting P.J.; We Concur: O'Rourke, J., Aaron, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
NOVEMBER 30, 2004 (Continued)

**D042017      People v. Wilkerson**

The judgment is affirmed as to the convictions. The judgment is reversed as to the sentence and remanded for resentencing in a manner consistent with the views expressed in this opinion. Haller, J.; We Concur: Huffman, Acting P.J., McDonald, J.

**D045191      Masaoka v. Workers' Compensation Appeals Board et al.**

The petition is denied.

**D044976      In re Wright on Habeas Corpus**

For good cause shown, Mel Hunter, Director of Atascadero State Hospital, is ordered to show cause why the relief requested should not be granted.

On or before December 30, 2004, the respondent is to file a return. The return is to address, but is not limited to, the following questions:

1) To assess whether a person is a sexually violent predator, the person must be evaluated by "two practicing psychiatrists or psychologists, or one practicing psychiatrist and one practicing psychologist" designated by the Director of Mental Health. (Welf. & Inst. Code section 6601, subd. (d); further statutory references are to Welf. and Inst. Code section 6601 unless otherwise indicated). If the subdivision (d) evaluators do not agree, subdivision (e) requires the Director to arrange an examination by two "independent professionals." Subdivision (g) requires "any independent professional" designated by the Director of Mental Health or the Director of Corrections to have five years of experience and precludes state employees. Subdivision (g) further defines independent professionals to include psychiatrists and "licensed psychologists who have a doctoral degree in psychology." Do the restriction of subdivision (g) apply to subdivision (d) evaluators (who meet the requirement of being a practicing psychologist") as well as subdivision (e) "independent professionals?"

2) What does the subdivision (g) requirement of having "a doctoral degree in psychology" mean, particularly given the various degrees that meet the requirements for licensing as a psychologist in California? (See Bus. & Prof. Code, section 2914.)

3) Assuming that all evaluators are subject to the subdivision (g) requirements for an "independent professional" and that Dr. Jackson's degree does not qualify as "a doctoral degree in psychology," does the procedural posture of this case render the case moot or any error harmless? (See e.g. People v. Superior Court (Preciado)(2001) 87 Cal.App.4th 1122).

4) How do the regulations contained in California Code of Regulations, Title 15 impact this matter? Petitioner shall file a traverse within 15 days of the filing of the return. The matter will be set for the April 2005 calendar. Oral argument will be deemed waived absent a request by either party on or before January 31, 2005.

The parties are requested to stipulate as to Dr. Jackson's specific doctoral degree. The stipulation should be filed before or concurrent with the filing of the traverse.

**D045418      William B. Kolender, Sheriff v. Superior Court of San Diego County/Daniels et al.**

The petition is denied.

**D045378      Valdez v. Superior Court of San Diego County/Franke & Associates Inc., et al.**

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
DECEMBER 1, 2004

**D045096        In re Scott H., a Juvenile**

The appeal is dismissed. Haller, J.; We Concur: Huffman, Acting P.J., Nares, J.

**D044602        People v. Ernst, Jr.**

The judgment is affirmed. The matter is remanded to the superior court with directions to hold a hearing as outlined in this opinion. O'Rourke, J.; We Concur: McConnell, P.J., Haller, J.

**D045396        People v. Nguyen**

The appeal filed November 9, 2004 from the order of June 28, 2004, is DISMISSED as untimely (Cal. Rules of Court, rule 30.1(a)).

**D045301        Webb & Carey, APC v. Keenan et al.**

The appellant having failed to timely pay the filing fee, the appeal is dismissed.

**D042230        Quiksilver Development Corporation v. Ray**

The judgment is affirmed. O'Rourke, J.; We Concur: Benke, Acting P.J., Huffman, J.

**D042624        In re the Marriage of Lyon**

Appellant's petition for rehearing is denied.

**D043012        Gaggero et al. v. County of San Diego**

The opinion filed November 2, 2004, is ordered published.

**D037968        People v. Majors**

Majors's convictions of kidnapping (count 2) and false imprisonment (count 4) are reversed. The trial court's order denying Majors' Penal Code section 1538.5 motion is reversed and the trial court is directed to permit him to withdraw his guilty plea to counts 5 through 9 if within 30 days after this decision becomes final as to this court he files a motion to withdraw his guilty plea. In the event no motion for withdrawal of the guilty plea is timely filed, Majors' convictions of counts 5 through 9 are affirmed. In all other respects, the judgment is affirmed and the matter is remanded to the trial court for resentencing. McDonald, J.; I Concur: McIntyre, J.; Concurring and Dissenting: Benke Acting P.J.

**D044857        Jessica A. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The petitions are denied. CERTIFIED FOR PARTIAL PUBLICATION Aaron, J.; We Concur: McDonald, Acting P.J., Irion, J.

**D043917        People v. Leon**

The opinion filed November 2, 2004, is certified for publication.

**D043828        Atta v. Universal Underwriters Insurance Company**

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 17(a). The appeal is dismissed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
DECEMBER 2, 2004

**D044866      Ricardo B. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The petition is denied. McDonald, Acting P.J.; We Concur: Aaron, J., Irion, J.

**D043281      Toscano v. Greene Music**

The award of future earnings calculated from September 1, 2001 to the date of Toscano's retirement in 2017 is vacated and the matter remanded for a new trial on the issue of damages only. The judgment is otherwise affirmed. CERTIFIED FOR PUBLICATION. O'Rourke, J.; We Concur: Benke, Acting P.J., Huffman, J.

**D044209      In re Olivia J., a Juvenile**

The judgment is affirmed. CERTIFIED FOR PUBLICATION. O'Rourke, J.; We Concur: Huffman, Acting P.J., McDonald, J.

**D042459      Sanchez et al. v. Giromex Inc., et al.**

The judgment is affirmed. Irion, J.; We Concur: Haller, Acting P.J., McIntyre, J.

**D044218      People v. Jones**

The judgment is affirmed. Nares, J.; We Concur: Huffman, Acting P.J., McDonald, J.

**D043114      People v. Martinez**

Pursuant to California Rules of Court, rule 25(b)(2), the Court requests Respondent answer Appellant's petition for rehearing filed on November 24, 2004. An answer must be filed on or before December 9, 2004.

**D045325      In re Herman Kreutzer on Habeas Corpus**

The petition is denied.

**D045327      In re Herman Kreutzer on Habeas Corpus**

The petition is denied as duplicative of petition D045325

**D042328      Mussey Grade Park, LLC et al. v. Pine et al.**

**D043126      Mussey Grade Park, LLC et al. v. Pine et al.**

(Consolidated case) The request for publication of the opinion is denied. The petition for rehearing is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
DECEMBER 3, 2004

**D045468      Alto v. Superior Court of San Diego County/Cardoza**

The petition is denied.

**D042540      Payne v. Volume Services America, Inc.**

The judgment is reversed insofar as it concerns Payne's cause of action for wrongful termination in violation of public policy, and the matter is remanded for a new trial on that cause of action only. In all other respects, the judgment is affirmed. The parties shall bear their own costs on appeal. McConnell, P.J.; We Concur: Huffman, J., McDonald, J.

**D045469      Wilson v. Superior Court of San Diego Count/The Vons Companies Inc., et al.**

The petition is denied.

**D045443      People v. Morgan et al.**

The petition for transfer is denied.

**D044676      In re Ricardo A., a Juvenile**

The judgment is affirmed. Irion, J.; We Concur: Nares, Acting P.J., Aaron, J.

**D044202      People v. Contreras**

The convictions are affirmed. The sentence is reversed and the matter is remanded for determination whether Contreras has a strike prior and resentencing. Huffman, J.; We Concur: McConnell, P.J., Aaron, J.

**D044644      In re Elias D., a Juvenile**

Order affirmed. McConnell, P.J.; We Concur: McIntyre, J., Aaron, J.

**D044581      Idanta Partners Ltd. v. Sensory Systems, Inc.**

Upon written request filed by appellant, the appeal is dismissed.

**D041034      Czarnik v. Illumina, Inc.**

The judgment is modified to reduce the punitive damage award to \$2,196,935 million and, as so modified, is affirmed, as are the challenged post-trial orders. Each party is to bear its own costs on appeal. McIntyre, J.; We Concur: McConnell, P.J., O'Rourke, J.